

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
September 12, 2017

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Keawe at 9:05 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Kimo Keawe  
Vice Chair Roy Ho  
Mr. Wade Lord  
Mr. Sean Mahoney  
Ms. Glenda Nogami Streufert

Absent and Excused:  
Ms. Kanoe Ahuna  
Ms. Donna Apisa

The following staff members were present: Planning Department – Director Michael Dahilig, Chance Bukoski, Dale Cua, Jody Galinato, Leslie Takasaki, Alex Wong; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Paula M. Morikami, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Keawe called the meeting to order at 9:05 a.m.

Planning Director Michael Dahilig: We are working off of the nine o'clock and one second agenda this morning.

**ROLL CALL**

Mr. Dahilig: Commissioner Ahuna. Commissioner Apisa. Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Commissioner Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Lord.

Mr. Lord: Here.

Mr. Dahilig: Chair Keawe.

Chair Keawe: Here.

Mr. Dahilig: Mr. Chair, you have five (5) members present this morning.

Chair Keawe: Thank you.

### **APPROVAL OF AGENDA**

Mr. Dahilig: Mr. Chair, we would ask for approval of the agenda – Item C on the agenda – with one (1) exception; to move Item F.2.c., which is the SMA Use Permit 2018-3, to the first item under the Hearings items.

Chair Keawe: Okay. Is that the only change?

Mr. Dahilig: That is the only change, Mr. Chair; we would suggest.

Chair Keawe: Okay. We have a change to the agenda to move Item F.c. [sic] to the front of the agenda.

Mr. Dahilig: Actually, I would...sorry, my apologies. I would also move Item K, which is the Subdivision Committee Reports, immediately after Item H, which is Executive Session.

Ms. Nogami Streufert: I move to accept the agenda as amended.

Mr. Mahoney: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote)  
Motion passes 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

### **MINUTES of the meeting(s) of the Planning Commission**

Regular Meeting of July 25, 2017

Regular Meeting of August 8, 2017

Workshop of August 8, 2017

Mr. Dahilig: We have Item D. These are the minutes of the regular meeting of July 25, 2017, the regular meeting of August 8, 2017, and the workshop of August 8, 2017 for your approval.

Chair Keawe: Can we take this as a group; all of the meeting minutes?

Mr. Mahoney: Chair, move to approve the minutes of the regular meeting of July 25, 2017, regular meeting of August 8, 2017, and workshop of August 8, 2017.

Chair Keawe: Do I have a second?

Mr. Lord: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote)  
Motion passes 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: We do have two (2) supplemental items for receipt, in addition to the items that have been submitted to you under Item E. This is under Item F.2.c.4. This is a handout that was passed out. This is from Teresa Tumbaga, Deputy County Attorney, concerning a continuance for the item, as well as a letter of support for an additional supplement for the shoreline setback variance under SSV-2018-1 for your receipt.

Chair Keawe: Alright. Based on the items that Mr. Dahilig has mentioned, can we have a motion to receive for the record?

Mr. Mahoney: Chair, move to receive the items that the Director had mentioned.

Ms. Nogami Streufert: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote)  
Motion passes 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

### **HEARINGS AND PUBLIC COMMENT**

#### New Agency Hearing

Special Management Area Use Permit SMA(U)-2018-3 for the construction of a public shared use path extending from Papaloa Road to the Uhelekawawa Canal, and associated improvements involving an existing parking lot and a new comfort station, and Shoreline

Setback Variance Permit SSV-2018-1 to deviate from the shoreline setback requirement, involving several properties along the makai side of Kūhiō Highway in Waipouli identified as Tax Map Keys: 4-3-002:001, 012-016, 019, 020; 4-3-007:009, 011, 027, 028; 4-3-008:016, and containing a total area of approx. 2.14 acres = County of Kauaʻi, Department of Public Works.

Mr. Dahilig: We are now on Item F.2.c. This is the item that has been moved up regarding Special Management Area Use Permit SMA(U)-2018-3 for the construction of a public shared use path extending from Papaloa Road to the Uhelekawawa Canal, and associated improvements involving an existing parking lot and a new comfort station, and Shoreline Setback Variance SSV-2018-1 to deviate from the shoreline setback requirement, involving several properties along the makai side of Kūhiō Highway in Waipouli identified as Tax Map Keys: 4-3-002 Parcels 001, 012 through 016, 019, 020; and 4-3-007 Parcels 009, 011, 027, 028; and 4-3-008 Parcel 016, and containing a total area of 2.14 acres. The applicant is the County of Kauaʻi, Department of Public Works.

Mr. Chair, this item has received intervention that was duly filed and has been transmitted to the Commission for its review. However, as part of the received items that the Commission just received by motion, the Deputy County Attorney that is representing the Public Works Department is requesting a two-week continuance to review the petition for intervention and to move this item for continued public hearing on September 26<sup>th</sup>. I would, though, however, because of required action timelines, would ask that the Deputy County Attorney place on record whether or not she, on behalf of the client, does waive time for this two-week continuance for this matter.

Chair Keawe: Can you come forward, please, and state your name?

Deputy County Attorney Teresa Tumbaga: Good morning, Planning Commission. Deputy County Attorney Teresa Tumbaga on behalf of the Department of Public Works. As stated, the Department of Public Works is requesting a continuance. The Department of Public Works is also waiving the time periods. I think we are referring to the public hearing within sixty (60) calendar days and the Department of Public Works is waiving that time period.

Chair Keawe: Okay.

Deputy County Attorney Jodi Higuchi Sayegusa: And that is up until the 26<sup>th</sup>. Are you okay with September 26<sup>th</sup>?

Ms. Tumbaga: The two-week continuance?

Ms. Higuchi Sayegusa: Two (2) weeks, yes.

Ms. Tumbaga: Yes, that is fine.

Chair Keawe: So you feel this continuance will allow you to organize a little bit better, what needs to be done, or...?

Ms. Tumbaga: Correct. The Department would like to have the opportunity to look into the issues raised in the petition, as well as determine whether or not they want to oppose the Petition to Intervene.

Chair Keawe: Okay. Mr. Ho.

Mr. Ho: What are the guidelines to allow an intervenor at this point?

Chair Keawe: Jodi.

Ms. Higuchi Sayegusa: Our rules – Chapter 4 – specify some standards for a party to request status as an intervenor; namely that they will be directly and immediately affected by the proposed application and their interest is distinguishable from the general public, etc. So it is all specified in Chapter 4. At this point, I think we are going to – subject to the Public Works' request – move the hearing on whether or not to admit the requested third party as an intervenor and party in the case to September 26<sup>th</sup>.

Chair Keawe: Commissioner Streufert.

Ms. Nogami Streufert: Just a question. This was slated for construction in 2015 with funds from the Department of Transportation and the Federal Highway Administration. Do those funds expire at some point in time? Because this was in the 2014 budget, it was slated for 2015.

Mr. Dahilig: Commissioner, I think we can answer the question, but before we maybe provide some information, because we have this pending intervention, it opens it up for contested case hearing. As a consequence, our department won't be presenting any report or evidence in the matter because we are going to move into a formal process on the matter. If I could suggest, those questions could be answered as part of the contested case hearing items. But because there is a potential right to intervene that is being asserted, we won't be engaging in any reporting on our analysis on the application other than what has been submitted to the Commission. We do that as a matter of course to, again, provide opportunities for fair play because the Commissioners then turn into administrative judges at this point, if the intervention happens. So we can certainly try to get you the information, but I would caution that we could be running afoul of the administrative judge role that the Commissioners can be playing without having the opportunity for both sides to, then, argue whether that evidence is appropriate or not.

Chair Keawe: Any other questions? If there are no other questions, any questions, counsel?

Ms. Tumbaga: No. Just to let the Commission know, I also spoke with Deputy County Attorney Adam Roversi who represents the Planning Department and he had no objections. Yesterday, I also spoke with Ms. Rayne Regush who had submitted the Petition to Intervene and she was fine with me letting the Commission know that she also had no objections to our request for a continuance.

Chair Keawe: Are we ready to make a motion to defer?

Mr. Mahoney: Chair, I would like to make a motion for continuance for Item F.2.c. to September 26<sup>th</sup>.

Ms. Nogami Streufert: Second.

Chair Keawe: Moved and seconded. Any discussion on this motion? If not, all those in favor? (Unanimous voice vote) Motion carried 5:0.

Mr. Dahilig: Mr. Chair, given that the agency hearing has not been opened on this matter, it also has been posted pursuant to Chapter 92, Hawai'i Revised Statutes. There are no individuals that were signed up to testify on this item. However, to be consistent with the Sunshine Law, we would suggest that a call be made for any public testifiers on this item.

Chair Keawe: We will hear public testimony under the Sunshine Law, Section 92, on any item. If not...

Mr. Dahilig: Thank you, Mr. Chair.

#### Continued Agency Hearing

Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 to deviate from the minimum lot size requirement within the Agriculture (A) zoning district, pursuant to Section 8-8-3(b) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the makai side of Kūhiō Highway in Kīlauea, approx. 600 ft. north of the Waiakalua Street/Kūhiō Highway intersection and further identified as Tax Map Key (4) 5-1-005:132, and affecting a total area of 27,450 sq. ft. = *Brian Lansing & David Camp*. [Director's Report (DR) received 3/28/17, DR Sup 1 received, hearing deferred 4/11/17, DR Sup 2 received, hearing deferred 6/27/17.]

Mr. Dahilig: We are back to Item 1.a. This is Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 to deviate from the minimum lot size requirement within the Agriculture zoning district pursuant to Section 8-8-3(b) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the makai side of Kūhiō Highway in Kīlauea, approximately 600 feet north of the Waiakalua Street/Kūhiō Highway intersection and further identified as Tax Map Key (4) 5-1-005 Parcel 132, and affecting a total area of 27,450 square feet. The applicant is Brian Lansing and David Camp. There was a Director's Report received on 3/28/17, a Supplemental received and hearing deferred on 4/11/17, and a second Supplemental received and hearing deferred on 6/27/17. There is a third Supplemental Report relating to this item.

Mr. Chair, we would suggest the Commission open the continued agency hearing at this time.

Chair Keawe: We will go ahead and open this hearing at this time.

Mr. Dahilig: Mr. Chair, I do not have any other individuals signed up to testify on this particular agency hearing. The Department would suggest making a final call for any other testifiers for this hearing and close the agency hearing.

Chair Keawe: Are there any other testifiers on this particular item? If not, we will close the hearing on this item. Can we have a motion to close?

Mr. Mahoney: Chair, move to close the agency hearing.

Chair Keawe: Do I have a second?

Mr. Lord: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote) Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

#### New Agency Hearing (Continued)

Special Management Area Use Permit SMA(U)-2018-1 and Class IV Zoning Permit Z-IV-2018-1 for a development involving the construction of a one-story & two-story single-family residences, and a two-story residential duplex, and Variance Permit V-2018-1 to deviate from the land coverage requirement within the Residential (R-20) zoning district, located on properties along the makai side of Kūhiō Highway in Waipouli identified as 879 & 883 Niulani Road, further known as Tax Map Keys: 4-3-009:043 & 44, and containing a total area of 18,125 sq. ft. = Masakatsu Katsura (YMM, LLC). [Director's Report received by Commission Clerk 8/22/17.]

Mr. Dahilig: We are on Item F.2.a. This is a new agency hearing for Special Management Area Use Permit SMA(U)-2018-1 and Class IV Zoning Permit Z-IV-2018-1 for the development involving the construction of one-story and two-story single-family residences and a two-story residential complex, and Variance Permit V-2018-1 to deviate from the land coverage requirement within the Residential zoning district on properties along the makai side of Kūhiō Highway in Waipouli identified as 879 and 883 Niulani Road, further known as Tax Map Keys: 4-3-009 Parcels 043 and 044, and containing a total area of 18,125 square feet. The applicant is Masakatsu Katsura (YMM, LLC). There is a Director's Report received by the Commission Clerk on 8/22/17 and Supplemental No. 1 has also been submitted to the Commission.

The Department would recommend opening the agency hearing at this time.

Chair Keawe: We will open the agency hearing for this item.

Mr. Dahilig: Mr. Chair, I do not have any individuals signed up to testify on this particular agency hearing. The Department would recommend making a final call for any further testifiers and close the agency hearing.

Chair Keawe: Final call for any testimony on this item. If not, I will entertain a motion to close.

Mr. Mahoney: Chair, move to close the agency hearing.

Chair Keawe: Do I have a second?

Mr. Lord: Second.

Chair Keawe: It has been moved and seconded to close the hearing. All those in favor?  
(Unanimous voice vote) Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

Special Management Area Use Permit SMA(U)-2018-2 to construct a single-family residence on a parcel situated at the intersection of Weke Road and Malolo Road in Hanalei Town, further identified as 4421 Malolo Road, Tax Map Key: 5-5-002:003, and containing a total land area of 33,084 sq. ft. = *Scott Sloan Family Trust*.

Mr. Dahilig: We are now on Item F.2.b. This is a new agency hearing for Special Management Area Use Permit SMA(U)-2018-2 to construct a single-family residence on a parcel situated at the intersection of Weke Road and Malolo Road in Hanalei Town, further identified as 4421 Malolo Road, Tax Map Key: 5-5-002 Parcel 003, and containing a total area of 33,084 square feet. The applicant is Scott Sloan Family Trust. There is a Director's Report pertaining to this matter.

Mr. Chair, I would recommend that the Commission open the agency hearing at this time.

Chair Keawe: We will open the agency hearing for this particular item.

Mr. Dahilig: Mr. Chair, I do not have any individuals signed up to testify on this particular agency hearing. The Department would recommend making a final call for any further testifiers and close the agency hearing.

Chair Keawe: This is a final call for any testimony on this particular item. If not, I will entertain a motion to close.

Mr. Mahoney: Chair, move to close the agency hearing.

Chair Keawe: Do I have a second?

Ms. Nogami Streufert: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote)  
Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.



Class IV Zoning Permit Z-IV-2017-15 and Use Permit U-2017-13 to allow construction of a swimming pool and pavilion on a parcel situated within the Seacliff Plantation Subdivision in Kīlauea, located along the mauka side of Makanaano Place, further identified as 2183F Makanaano Place, Tax Map Key: 5-2-004:091, and affecting a portion of a larger parcel containing 5.204 acres = Robert Leonard. [Director's Report received 7/11/17, hearing POSTPONED due to applicant's notification of abutting owners 7/25/17.]

Mr. Dahilig: We are on Item F.2.d. This is a new agency hearing for Class IV Zoning Permit Z-IV-2017-15 and Use Permit U-2017-13 to allow construction of a swimming pool and pavilion on a parcel situated within the Seacliff Plantation Subdivision in Kīlauea, located along the mauka side of Makana'ano Road [sic], further identified as 2183F Makana'ano Place, Tax Map Key: 5-2-004 Parcel 091, and affecting a portion of a larger parcel containing 5.204 acres. Robert Leonard is the applicant. There is a Director's Report received on 7/11/17, hearing postponed due to applicant's notification requirements that were not met on 7/25/17. There is a Supplemental No. 1 Director's Report pertaining to this matter.

Mr. Chair, the Department would recommend opening the agency hearing at this time.

Chair Keawe: We open the agency hearing on this particular item at this time.

Mr. Dahilig: Mr. Chair, I do not have any individuals signed up to testify on this particular agency hearing. The Department would make a recommendation to make a final call for any further testifiers and close the agency hearing.

Chair Keawe: This is a final call for testimony on this item. If not, I will entertain a motion to close.

Mr. Mahoney: Chair, move to close the agency hearing.

Chair Keawe: Do I have a second?

Ms. Nogami Streufert: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote) Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

Continued Public Hearing

New Public Hearing

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: We do not have any continued public hearings this morning, nor any new public hearings for the Commission, and a call has been made already for any testifiers pursuant to HRS 92 under the Sunshine Law.

## **CONSENT CALENDAR**

### Status Reports

#### Director's Report(s) for Project(s) Scheduled for Agency Hearing on 9/26/17

Special Permit SP-2018-2, Use Permit U-2018-1 and Class IV Zoning Permit Z-IV-2018-1 to construct and operate a solar utility facility on a parcel located on the makai side of Kōloa Road, approx. 600 ft. south east of the Kōloa Road and Lawailoa Lane intersection, further identified as Tax Map Key (4) 2-6-003:001, and containing a project area of approx. 196.33 acres of a 1,062.291 acre parcel = AES Lāwa'i Solar.

Mr. Dahilig: We do have, for Consent Calendar, one (1) Director's Report for receipt and setting on 9/26/17. This is Special Permit SP-2018-2, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-1 relating to AES Lāwa'i Solar. I would, again, suggest to the Planning Commission that this is a matter that will have to be referred further up to the State Land Use Commission, so just to anticipate that there will be some logistics involved with transcription concerning this matter if the Commission wishes to receive and set this for 9/26/17.

Chair Keawe: Okay.

## **EXECUTIVE SESSION**

Mr. Dahilig: If there is no request for discussion on that item, Mr. Chair, Item H. This is Executive Session. We do not have any this morning.

## **COMMITTEE REPORTS**

### Subdivision

Mr. Dahilig: Per the amended agenda, we move to Item K, which is the Committee Reports on the Subdivision.

Chair Keawe: Mr. Ho.

Mr. Ho: Good morning. Just one (1) item before us today; Marty Hoffman Revocable Trust asking for a deferral to October 10<sup>th</sup>. It was granted. That concluded our meeting.

Chair Keawe: Okay. Can I have a motion to accept the Subdivision Committee Report?

Mr. Mahoney: Chair, move to accept the Subdivision Report.

Chair Keawe: Do I have a second?

Mr. Lord: Second.

Chair Keawe: It has been moved and seconded to accept the report. All those in favor? (Unanimous voice vote) Thank you. Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

### **GENERAL BUSINESS MATTERS**

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU#1166, Victor Meschures/PMD Hanalei LLC (Weke Road Estate), for Failure to Timely Renew, Tax Map Key (4)55002012, Hanalei, Kaua'i, received on August 25, 2017 via email, to a Hearings Officer (Contested Case Hearing No. CC-2017-5); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU#1202, Earl Smith Trust/Anininina LLC (Hiolani at Hā'ena), for Failure to Timely Renew, Tax Map Key (4)58008040, Hā'ena, Kaua'i, received on August 25, 2017 via email, to a Hearings Officer (Contested Case Hearing No. CC-2017-6); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU#5089 (Hanalei Ilikea), Kauains, LLC, for Failure to Timely Renew, Tax Map Key (4)55001022, Hanalei, Kaua'i, received on August 28, 2017, to a Hearings Officer (Contested Case Hearing No. CC-2017-7); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU#5090 (Hanalei Nalu), Kauains, LLC, for Failure to Timely Renew, Tax Map Key (4)55001023, Hanalei, Kaua'i, received on August 28, 2017, to a Hearings Officer (Contested Case Hearing No. CC-2017-8); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU#5091 (Hanalei Bay Hale), Kauaians, LLC, for Failure to Timely Renew, Tax Map Key (4)55001024, Hanalei, Kaua'i, received on August 28, 2017, to a Hearings Officer (Contested Case Hearing No. CC-2017-9); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Forfeiture of Non-Conforming Use Certificate TVNCU#5035 (Mango Cottage), Boomerang, Ltd., Inc./Charles Paterson for Failure to Timely Renew, Tax Map Key (4)260070034, Kōloa, Kaua'i, received on August 29, 2017, to a Hearings Officer (Contested Case Hearing No. CC-2017-10); Request for Delegation of Authority to the Clerk of the Commission to Procure and Appoint a Hearings Officer on Behalf of the Commission for the Instant Appeal.

Mr. Dahilig: We are now on Item I. Just for efficiency purposes, if I could suggest the Commission take Items I.1. through I.6. in total. This is relating to six (6) appeals of the Planning Director's decision relating to TVR Certificates that were allegedly not renewed in a timely manner. These are for Tax Map Keys (4)55002012, (4)58008040, (4)55001022, (4)55001023, (4)55001024, and (4)260070034. The Clerk would request a delegation of authority to procure and appoint a Hearings Officer on behalf of the Commission to handle these matters. So it would be to receive the appeals and refer; that would be the suggested motion, Mr. Chair, on these six (6) items.

Chair Keawe: Do I have a motion to receive?

Mr. Mahoney: Chair, I move to receive the items and move to delegate authority to the Clerk of the Commission to procure and appoint a Hearings Officer on behalf of the Commission.

Chair Keawe: We have a motion. Do we have a second?

Ms. Nogami Streufert: Second.

Chair Keawe: Any discussion on this motion?

Mr. Dahilig: Mr. Kugle is in the audience, if he has any concerns.

Chair Keawe: Mr. Kugle, would you like to step up, please?

Mr. Greg Kugle: Thank you, Chair. I represent, I think, five (5) of those six (6) and we have no objection to the referral. I mean, we will just deal with that once it goes, but as to the motion, no, we don't have any objection to that. Thank you.

Chair Keawe: Thank you. We have a motion on the floor. Any further discussion on the motion? All those in favor? (Unanimous voice vote) Any opposed? (None) Thank you. Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

### **COMMUNICATION (For Action)**

Mr. Dahilig: We are now on Item J for Communication. We have none for action this morning.

### **UNFINISHED BUSINESS (For Action)**

Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 to deviate from the minimum lot size requirement within the Agriculture (A) zoning district, pursuant to Section 8-8-3(b) of the Kaua'i County Code (1987) as amended, involving a parcel situated on the makai side of Kūhiō Highway in Kīlauea, approx. 600 ft. north of the Waiakalua Street/Kūhiō Highway intersection and further identified as Tax Map Key (4) 5-1-005:132, and affecting a total area of 27,450 sq. ft. = *Brian Lansing & David Camp*. [Director's Report (DR) received 3/28/17, DR Sup 1 received, hearing deferred 4/11/17, DR Sup 2 received, hearing deferred 6/27/17.]

Mr. Dahilig: We move back to Unfinished Business. This is Item— Move to Item L. This is Unfinished Business. We go back to the continued agency hearing for Item F.1.a. This is Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2. This is a deviation from the minimum lot size requirement at Tax Map Key (4) 5-1-005 Parcel 132. Mr. Bukoski will be providing the report on behalf of the Department.

Chair Keawe: Mr. Bukoski.

Staff Planner Chance Bukoski: Aloha, Chair and Commissioners. Good morning. Just for the record, Supplemental No. 2 was received on June 27<sup>th</sup>. Supplemental Nos. 2 and 3 were received on June 27, 2017, so there is no Supplemental No. 3 pertaining to this. With that being said, based on the ongoing findings, it is hereby recommended that Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 be denied. Due to the recommendation, this should not discourage the applicant in reapplying with the allotted time between application processes and reapplying, which is six (6) months. The applicant would have sufficient time to resolve this matter with the Department of Transportation.

Chair Keawe: Okay. Any questions for the Planner? Is the applicant here? Representative for the applicant?

Ms. Maren Arismendez-Herrera: Good morning, Commission. My name is Maren Arismendez-Herrera from Esaki Surveying; here representing the owners. Our intention today was to respectfully request a deferral of three (3) months. The owners have made progress with the

Department of Transportation, but they are still in negotiations with DOT; that is why we would like to request a three-month deferral.

Chair Keawe: Any questions for her? If I remember correctly, we deferred the last time you were here.

Ms. Arismendez-Herrera: Yes. At that—

Chair Keawe: For the same purpose.

Ms. Arismendez-Herrera: At that point, DOT had said that they would not sell. We have made progress. They have changed their minds again and are considering selling to the owners and they are currently in negotiations. So at this time, it would just be to allow them to come to the agreement.

Chair Keawe: So DOT has indicated a willingness to sell?

Ms. Arismendez-Herrera: Yes.

Chair Keawe: And prior to that, it was ‘no, we are not going to sell’.

Ms. Arismendez-Herrera: Yes. Originally, they had intentions to sell, then during the process, they said that they were unwilling to sell, and now they are...we have talked and made progress and it is back on the table and it is in negotiations.

Chair Keawe: In two (2) months, do you honestly think you are going to get an agreement from the DOT to sell?

Ms. Arismendez-Herrera: We think so; that the DOT will renew their original commitment.

Chair Keawe: Okay. Questions from commissioners?

Ms. Arismendez-Herrera: And we did request three (3) months just to make sure. The timeline was eight (8) to twelve (12) weeks, but just to be on the safe side, we would say the twelve (12) weeks.

Chair Keawe: Yes. Mr. Bukoski, any comment?

Mr. Bukoski: To this date, we have not received any evidence from the Department of Transportation pertaining to this matter, so we are kind of just waiting on the applicant if anything is to come about it.

Chair Keawe: Since our last meeting regarding this particular issue, there has been no communication to you from the Department of Transportation?

Mr. Bukoski: I have not received any documentation stating that DOT has changed their mind with the applicant.

Chair Keawe: Have you communicated, from your client, any indication to the Planning Department that you are continuing to work on it?

Ms. Arismendez-Herrera: No. Since we don't have any...we are still in negotiations, we really don't have anything to offer to the Planning Commission. We could have communicated, though...in our omission, we could have communicated to the Planning Department that we were in negotiations with DOT; that I can say.

Chair Keawe: Commissioner Streufert.

Ms. Nogami Streufert: Thank you. Mr. Bukoski, even if these two (2) lots were put together into one (1), my recollection from my notes is that it would still not meet the minimum size requirement for Ag land and for a farm dwelling. Is that correct?

Mr. Bukoski: Correct.

Ms. Nogami Streufert: Even if they were combined, that would still not be enough.

Mr. Bukoski: Correct. And that is why they are coming in for a Variance Permit.

Chair Keawe: Any further questions? Mr. Lord.

Mr. Lord: No.

Chair Keawe: Mr. Ho.

Mr. Ho: I'm good.

Chair Keawe: No? So, Mr. Bukoski, do you still stand by your original recommendation to deny?

Mr. Bukoski: Correct, Chair.

Mr. Dahilig: Mr. Chair, if I could jump in. Ma'am, are you prepared to proceed with the proceedings this morning on the merits of the application?

Ms. Arismendez-Herrera: We did prepare a response to the Director's Report and I have the response that was transmitted to the Planning Department. Hopefully everyone in the Commission received a copy.

Mr. Dahilig: But in terms of the action today, are you prepared to make a presentation on behalf of your client?

Ms. Arismendez-Herrera: We do not have a presentation prepared; just a response. .

Mr. Dahilig: Okay.

Ms. Arismendez-Herrera: Because we were requesting the deferral.

Mr. Dahilig: I guess, Mr. Chair, out of...may I just put something on the table as an option? Given that they are not prepared to move forward with the case this morning, and out of just notions of fair play, if I could suggest that the applicant provide, to our department...we ask the Commission— We would agree to the three-month continuance, but we ask that the Applicant provides to us a letter or some kind of email from the Department of Transportation evidencing that they are moving forward with this negotiation, and if we don't receive something within a month that we would set this for action on the merits of the application on November 14<sup>th</sup>, so you give them essentially a two-month window to essentially say we get a letter within a month, if we don't get the letter within a month, then we are going to set it for merits within a month and we can facilitate that because I would not feel comfortable, Mr. Chair, presenting our side of the analysis on the application without having the applicant be prepared for that. So If I could, maybe, just suggest that; that we would agree to the three-month continuance provided that they provide a letter from the DOT or an email from DOT to us within one (1) month, and if not, then we will set it for action on November 14<sup>th</sup>.

Chair Keawe: Any questions of Mr. Dahilig?

Mr. Dahilig: Does that sound agreeable?

Ms. Arismendez-Herrera: Yes. So possible deferral of three (3) months contingent on us providing, within a month, a letter from DOT, and failure to provide would schedule the...for the November.

Mr. Dahilig: It would be November 14<sup>th</sup>.

Ms. Arismendez-Herrera: Yes.

Chair Keawe: Any further questions?

Ms. Nogami Streufert: If I could ask a question.

Chair Keawe: Go ahead, Commissioner Streufert.

Ms. Nogami Streufert: So this is not to set a precedent that just because you are not prepared doesn't mean that you can defer it but rather, because there is something that is already in the works that we may not be aware of, and therefore we are deferring it.

Mr. Dahilig: Right. We haven't demanded that DOT give us some type of evidence from the applicant, so just to provide that opportunity for them to prove once and for all that what is being



said on the record is, in fact, clear. We can sort that matter out for the Commission in advance of any type of action the Commission would take.

Chair Keawe: Any further questions? Do I have a motion on this issue?

Mr. Mahoney: Chair, move to defer Class IV Zoning Permit Z-IV-2017-6 and Variance Permit V-2017-2 contingent upon a letter from the Department of Transportation with some kind of backing up your claim that there are negotiations going on.

Chair Keawe: Okay. Do I have a second?

Ms. Nogami Streufert: Second.

Chair Keawe: It has been moved and seconded. Any further discussion on this issue? If not, can we do a roll call vote?

Mr. Dahilig: The motion on the floor is to defer the item three (3) months, provided that they provide evidence of negotiations with DOT, and if there is none within one (1) month, to set the matter for action on November 14<sup>th</sup>.

Mr. Mahoney: 14<sup>th</sup>. Correct.

Mr. Dahilig: Okay. Commissioner Mahoney.

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Aye.

Mr. Dahilig: Commissioner Lord.

Mr. Lord: Aye.

Mr. Dahilig: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Mr. Dahilig: Chair Keawe.

Chair Keawe: Aye.

Mr. Dahilig: Five (5) ayes, Mr. Chair.

Chair Keawe: Thank you. Motion carried 5:0.

Ms. Arismendez-Herrera: Thank you, everyone.

## **NEW BUSINESS**

Special Management Area Use Permit SMA(U)-2018-1 and Class IV Zoning Permit Z-IV-2018-1 for a development involving the construction of a one-story & two-story single-family residences, and a two-story residential duplex, and Variance Permit V-2018-1 to deviate from the land coverage requirement within the Residential (R-20) zoning district, located on properties along the makai side of Kūhiō Highway in Waipouli identified as 879 & 883 Niulani Road, further known as Tax Map Keys: 4-3-009:043 & 44, and containing a total area of 18,125 sq. ft. = Masakatsu Katsura (YMM, LLC).  
[Director's Report received by Commission Clerk 8/22/17.]

Mr. Dahilig: We are on action on Item F.2.a. This is Special Management Area Use Permit SMA(U)-2018-1 and Class IV Zoning Permit Z-IV-2018-1 at Tax Map Keys 4-3-009:043 and 044. Masakatsu Katsura is the applicant and Dale will be providing the presentation on behalf of the Department.

Chair Keawe: Okay. Mr. Cua.

Staff Planner Dale Cua: Good morning, Mr. Chair and members of the Commission. At this time, I will just summarize the Director's Report and kind of highlight points of the application.

Mr. Cua read the Summary, Project Data, Project Description and Use, and Additional Findings sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: And that pretty much concludes the Director's Report for this application.

Chair Keawe: Okay. Can we hear from the applicant, please? Mr. Youn.

Mr. Avery Youn: Good morning. My name is Avery Young. I represent the applicant Masakatsu Katsura and his wife Mieko. Mr. Katsura is in the audience today in case you have any questions for him. I would like to pass out some information first. My apologies for not having enough copies of the elevations, but I put the big one up on the board so you could take a look at it.

I am here today to justify the reasons that we are requesting a variance. As you can see in the site plan, there are four (4) buildings. There is an existing duplex on Lot 43, which is on the left and in the rear of the property. There are two (2) units in there; the upstairs has three (3) bedrooms and downstairs has one (1) bedroom. On that lot, we propose a four-bedroom, three-bath single-family residence in the front. On the right side, there is an existing residence to be demolished. To the rear of that property there will be a duplex and in the front, it is going to be a single-family residence again which mirrors the one on Lot 43. So we are asking for a total of six (6) units on two (2) individual lots with two (2) units existing for a total of eight (8).

Although this property is surrounded by resorts – there is Kapa‘a Shores to the north and on the makai side, and there is also Kaua‘i Kailani one (1) lot away on the south side – this is not in the VDA, so the intent here is to provide long-term rentals for local residents. It is not intended for vacation rentals because it doesn’t qualify for it.

There are several permit requirements. We already did the Shoreline Setback Determination. Since this property is only approximately 250 feet from the shoreline and there is also...the Kapa‘a Shores is in front of it, there is a rocky shoreline, and there is also Niulani Road in front of it, so it easily qualifies for the SSD approval. A Special Management Area Use Permit is being asked for because it is more than 500,000 square feet; I’m sorry, it costs more than \$500,000. The Variance and the Class IV Permit – there are three (3) things we are asking for for the Variance. The first one is...multi-family dwellings shall be developed on lots that are 10,000 square feet or greater. In this case, both lots are less than 10,000 square feet so we are asking for a variance for that. The reason why they are less than 10,000 square feet – these lots were created a long, long time ago – way before the CZO was adopted – so it is what we would call a legal non-conforming use.

The next section of the ordinance we are asking to be a variance from is the lot coverage. Although these qualify for four (4) units on each lot, we tried many alternatives trying to get four (4) units on it, but it is very difficult to get four (4) units on here, especially with the 2:1 parking ratio that is required for units that are not in the Resort district. (With) the 2:1 parking ratio and four (4) units, we had lot coverage that was in excess of 50%, closer to 75-80%, which we thought would be difficult to qualify as a “minimum departure from the standards to qualify for a variance”. So in order to justify our variance approval, Lot 43 has a 12% deviation on size, Lot 44 has a 6% deviation on size, so we know those two (2) percentages can qualify as a “minimum departure”. Both lots are zoned R-20 and as I mentioned, we can qualify for four (4) units each, but in this case, we are only applying for three (3). The reason for that (is) we want to put two (2) stalls per unit because these are going to be rentals for local residents and we know they have more than one (1) car, as compared to visitors. To qualify for the Variance, we lowered the density from four (4) to three (3). For access into the existing garage for the residences, we are trying to use paved concrete strips instead of paving the whole driveway. We are using a single driveway instead of a driveway for each lot so that we can reduce the lot coverage and we can have shared access through easements to access both these lots and all of these units. We are requesting that if the variance deviation is too much that we be allowed to use Grasscrete for those parking stalls that are out in the open and not in the garages.

In order to further justify the Variance, we are asking that we provide two (2) parking stalls per unit, instead of asking for the 1.5 since this area would be considered a resort area. But in this case, we just want it to be rented out for local residents on a long-term basis. So combining both lots, the lot coverage that we came up with averages about 56%, which is only 6% over the maximum allowed, which I believe 6% would qualify as a minimum departure for a variance. Especially because if we tried to maximize the density to four (4) units, we would be way over and it would be very difficult to get the maximum density allowed by the R-20 zoning. We would have to go to a higher building; maybe three (3) or four (4) stories. This may trigger an elevator, which would put this probably out of reach for the market for local rentals. I believe I have covered all the reasons for the Variance. This project is pretty straightforward.

We will address the colors and design issues when we apply for a building permit. We want conceptual approval today in case there are any conditions that may alter the design. We can address it between now and the time we apply for a building permit.

At this point, I have no more to add. If you have any questions for the applicant, he is here, and I am ready to answer any questions that you may have.

Chair Keawe: Any questions? Mr. Ho.

Mr. Ho: Avery, I am reading something here from the Department of Health regarding your wastewater disposal and they are recommending that we deny the permit. Do you have any—

Mr. Youn: There is sewer access to this, so it will be tied into the Wailua Sewage Treatment Plant. There is an easement that goes to Kūhiō Highway. This lot is, like, one (1) block in from Kūhiō Highway. There is an easement from this lot to Kūhiō Highway and the lot that is behind it, which would be to the west, and that is what our intentions are; to connect this project into the existing sewage treatment plant.

Mr. Ho: Could you give something to us in...from the Department of Health?

Mr. Youn: I haven't seen their comments, so I can't address it yet.

Mr. Dahilig: Mr. Chair, given we are coming up...you wanted to take a short recess, right? So maybe if we could...we have the comments, right? If we could maybe give Mr. Youn an opportunity to take a look at the comments that we have from DOH and then we can come back after recess and he can address that.

Chair Keawe: Okay. We will take a short recess; ten (10) minutes.

The Commission recessed this portion of the meeting at 9:50 a.m.

The Commission reconvened this portion of the meeting at 9:59 a.m.

Chair Keawe: Alright. Mr. Youn, I think there was a question raised about the Health Department's concern with regard to sewers.

Mr. Youn: Yes. I read the condition. The condition looks fine. It refers to an individual wastewater system, which is a septic system, and we are not proposing to do that anyway. We are proposing to hookup to the sewage treatment plant.

Chair Keawe: Okay.

Mr. Youn: Okay. Let me repeat that. I reviewed the conditions and they are all fine, including the one from the Department of Health. It said that we should not be hooked up to an IWS, Individual Wastewater System, which is a septic system, which we are not going to do anyway. We are going to hookup to the sewage treatment plant through the easement that connects us, this parcel, to the existing sewer line on Kūhiō Highway.

Chair Keawe: Okay. Dale, if we approve, could that be a condition?

Mr. Cua: Actually, in one of the conditions, the Department is requesting written confirmation from the applicant with compliance with the various requirements of the agencies anyway.

Chair Keawe: Was that specific to this item or just in general?

Mr. Cua: Well, it says compliance with the requirements from all reviewing agencies. So not only will the applicant be working with DOH, but Public Works, Water, and so forth.

Chair Keawe: Okay. Alright. Any other questions for the applicant?

Mr. Lord: I have a question.

Chair Keawe: Commissioner Wade.

Mr. Lord: I am assuming that the purpose of the 50% requirement is based on a residential code for esthetics and for drainage. Looking at the calculations in the chart, the buildings themselves are well below the 50%. It seems that the concrete driveways create the issue for that. If the applicant were to use an alternate product, such as Grasscrete, for the driveways – if that were then not considered in the calculation as a solid surface – that would take you below the 50%. Is the Grasscrete an option that might be utilized for this project?

Mr. Youn: We probably would come in really close to 49-50% if we were allowed to use some Grasscrete, but it doesn't have to be the entire driveway. I think Grasscrete, if we allow that four (4) parking stalls to be Grasscrete only and keep the driveway paved, we could probably come real close to the 50% maximum, and I think that is what I asked for; that we just use the parking stalls to be Grasscrete. The driveway we would like to keep concrete, and I'm pretty sure we can meet it if we kept the driveway concrete and only Grasscrete the parking stalls that are not in the garages.

Chair Keawe: I think the concern, Avery, is just trying to make sure this stays within those standards even with the standard of deviation, but it would be better if we could get it as close as we can to what the standard is and using various methods of doing that Grasscrete combination or whatever. I think that would be more conducive to what should be done.

Mr. Youn: Okay. We can do that.

Chair Keawe: Dale, again, should we approve this, can you work with Mr. Youn and see if we can try to adjust those specific items–

Mr. Cua: Sure. Absolutely.

Chair Keawe: –to stay within those boundaries.

Mr. Cua: Sure.

Chair Keawe: Okay. Any other questions? Commissioner Streufert.

Ms. Nogami Streufert: The existing duplex that you have there, does that have a garage?

Mr. Youn: Yes, it does.

Chair Keawe: Okay. Any other—

Mr. Youn: Can I add something on the sewer system? The individual wastewater system.

Chair Keawe: Yes, go ahead.

Mr. Youn: You are allowed one (1) system per 10,000 square feet. Both of these lots are less than 10,000 square feet and each system can only have five (5) bedrooms. We far exceed the five (5) bedroom requirement for each lot, so we have to hookup to a sewer system anyway. We cannot use it.

Chair Keawe: Yes. Okay. Well, that's good. I mean, obviously. Alright. Any further questions on this issue? Are we ready to make a decision?

Mr. Dahilig: Mr. Chair, given Commissioner Lord's discussion relating to the Grasscrete, Dale is going to add some additional language to one of the conditions so that we are...our suggested motion for the Commission would be to approve the Variance portion of the overall permit application provided that they employ Grasscrete. So if you can maybe...Dale, if you can just point out where the additional language would lie.

Mr. Cua: The condition would probably read...and it would be Condition No. 13 of the permits. The condition would read, "The Applicant shall work with the Planning Department to reduce the overall lot coverage of the property to comply with the land coverage requirements within the Residential district prior to building permit approval."

Chair Keawe: Okay. Everybody understand? Okay. Mr. Youn, is that acceptable?

Mr. Youn: Yes, it is and I think we can do it.

Chair Keawe: Is it acceptable to Masakatsu Katsura?

Mr. Youn: We reviewed the conditions and all of the conditions are just fine.

Chair Keawe: Alright. Are we ready to make a decision?

Mr. Mahoney: Yes. Chair, I move to approve Special Management Area Use Permit SMA(U)-2018-1 and Class IV Zoning Permit Z-IV-2018-1 and Variance Permit V-2018-1 to deviate from the land coverage within the Residential (R-20) zoning.

Chair Keawe: Okay. And then there are also changes to the conditions.

Mr. Mahoney: As amended conditions.

Chair Keawe: Okay.

Ms. Nogami Streufert: Second.

Chair Keawe: Alright. Everybody understand what it is? Any further discussion on this motion?

Mr. Mahoney: Well, just that it is nice to see that there is long-term rental housing being designed; that not only looks this good, that is going to be a part of that community that is desperately needed, and there is somebody stepping up and doing long-term rentals. I appreciate the applicant's move in that venue.

Mr. Youn: Thank you.

Chair Keawe: Certainly. Very nice of you. Alright. The motion on the floor has been seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. Thank you.

Mr. Youn: Thank you, Commissioners. We appreciate your time and your assistance.

Mr. Dahilig: Thank you, Mr. Chair.

Special Management Area Use Permit SMA(U)-2018-2 to construct a single-family residence on a parcel situated at the intersection of Weke Road and Malolo Road in Hanalei Town, further identified as 4421 Malolo Road, Tax Map Key: 5-5-002:003, and containing a total land area of 33,084 sq. ft. = *Scott Sloan Family Trust*.

Mr. Dahilig: We are now on Item F.2.b. This is Special Management Area Use Permit SMA(U)-2018-2. This is the property at 4421 Malolo Road, Tax Map Key 5-5-002 Parcel 003. This is the Sloan Family Trust matter. Jody will be providing the report on behalf of the Department.

Staff Planner Jody Galinato: Good morning, Mr. Chair and members of the Commission. I will try to make my presentation as short as I can.

Ms. Galinato read the Summary, Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: And that concludes my report.

Chair Keawe: Any questions for the Planner? Do we have a representative for the applicant?

Mr. Ian Jung: Good morning, Chair Keawe and members of the Commission. Ian Jung on behalf of Scott Sloan Family Trust. Here with me is Jon Kegel who is one of the architects' representatives. That was a very comprehensive report, so I won't go into any of the details, but one of the focus points of the application which we want to try and convey to the Commission, and because it is in the SMA, it is a second dwelling in the SMA. To alleviate the visual impact of the structure, we came up with a very extensive landscape plan. What I did is I attached the landscape plan to a supplemental we just (inaudible) out which has the color board. If you look on the 2<sup>nd</sup> page of the landscape, which has the landscape plan, what we did to sort of mask or mitigate the visual impact is put in a good amount of coco trees in particular, as well as the Hong Kong orchid trees at the front gate along Weke Road, as well as the entry driveway along Malolo Road; so spread amongst the property to try and mask the massing of the structure. We have additional lower-level shrub trees that can mitigate the visual impact. With that, it is in its plantation-style element with the board and batten structure, as well as the rock wall features. So we tried to get the structure in keeping with similar residences within Hanalei.

One of the other issues is it is a part of a Condominium Property Regime; the Bounty House Property Regime. The structure that was originally there, which some of you may have recalled, it was the original bounty house that had that large fishhook at the top there. The historical integrity of that structure was preserved when the structure was relocated to the eastern boundary of the lot to make room for this new residence that is being proposed.

With that, we can answer any questions you may have, as well as Jon is available for questions on any of the architectural features.

Chair Keawe: Any questions for the applicant?

Mr. Lord: I have a question.

Chair Keawe: Yes. Commissioner Lord.

Mr. Lord: Can you tell me, based on this landscape plan, where the old house is located in relation to this house?

Mr. Jung: If you are looking at it, reading the verbiage straight, on the right hand side, the old Bounty House is actually...this is the boundary line, the rock wall that is on the side there; that is the boundary for Unit A and B.

Mr. Lord: Okay.

Mr. Jung: So the Bounty House is essentially where the diagram of and legend of trees are; on that side. And if you look at Exhibit E-1 on our application, we have a site plan which shows where that location of the Bounty House is.

Mr. Lord: Okay, thank you.



Chair Keawe: Can you tell me a little bit about the rock wall? You said that the height varies. So what are we looking at as far as height on that wall that pretty much encompasses the whole property?

Mr. Jung: Oh, the rock wall?

Chair Keawe: The rock wall.

Mr. Jung: Along there it is 4 feet.

Mr. Jon Kagle: The property wall. But on the CPR boundary that is there currently – that was done with a Zoning Permit – and that one is 6 feet tall–

Chair Keawe: 6 feet.

Mr. Kagle: –separating the two. Correct. The one along Weke Road, that is part of this project, will be lower and that will vary in certain areas.

Chair Keawe: Okay. So the house, basically, will be visible, obviously, from Weke Road and also offer a view to the applicants, I guess, as far as being enclosed by a 6-foot wall. (Laughter)  
Commissioner Streufert.

Ms. Nogami Streufert: On the letter that was sent on January 22, 2015 for the Special Management Area Minor Permit, the County of Kaua'i Fire Department had objections to that project. Was that ever addressed? It is not in our documents whether it was...what the objection was or what the mitigation was for that.

Mr. Jung: I actually did see that when I was looking through the old SMA. What I surmise is that they meant to say "no objections" because typically what the Fire Department will do is just say comply with the Fire Code. For this particular application, we did get comments back from the Fire Department that said that the project shall comply with any pertinent Fire Codes established by the County of Kaua'i, and that one was signed on August 14, 2017 and that is attached to the Director's Report. But I did find it curious as well for the SMA for the rock wall.

Ms. Nogami Streufert: For the 2015. Right.

Mr. Jung: Yes.

Ms. Nogami Streufert: So you think that that is a typo?

Mr. Jung: I think it is a typo, but if it is something you want us to go back and reach out to the Fire Department on, we certainly can. But we will have driveway entry to Malolo Road through the rock wall that goes along into the Malolo entry of the structure, driveway entry, for a fire truck to pull into.

Ms. Nogami Streufert: Because it is the Fire Department and that is a health and safety issue, I would like to see that resolved before...and if it is a typo, that is understandable. If there is an objection, and if it is a reasonable objection, then I don't imagine that it is not...then that should be resolved because it would possibly be a health and safety issue.

Mr. Jung: Understood.

Ms. Nogami Streufert: Thank you.

Mr. Jung: We are happy to work that out with them.

Chair Keawe: Okay. Jody. I know you are working on it.

Ms. Galinato: Okay.

Chair Keawe: Okay, Jody, can we have your recommendation, please?

Ms. Galinato: Yes. Based on the foregoing conclusion, it is recommended that Special Management Area Use Permit SMA(U)-2018-2 be approved with the following conditions. I've put Condition Nos. 1 through 12 in your packets. There would be an amendment on Condition No. 2 to read that the proposed color scheme for the resident and a detailed landscaping plan, and we would add "including pool plan" because the pool is fronting Weke Road. And then on Condition No. 5, at the end, we would include requiring Fire...what was that word, Mike? I can't read it. (Laughter)

Mr. Dahilig: I'm sorry for my chicken scratch.

Ms. Galinato: Including resolving Fire Department concerns for 2015 SMA Minor, as Commissioner Streufert mentioned. So just the addendum on Item No. 2 and Item No. 5.

Chair Keawe: Okay. Ian, are those conditions acceptable?

Mr. Jung: Yes, they are. I reviewed them with the applicant and he is amenable to those conditions.

Chair Keawe: Okay. Any further discussion on this item? No? If not, are we ready to make a decision?

Mr. Dahilig: Mr. Chair, if I could just clarify. There is a draft landscape review plan that has been circulated. I just want to ensure that this is just a proposal and that we will follow through with enforcement of Condition No. 2 consequentially so that the Commission's actions are not interpreted to be an approval of this design plan, per se.

Chair Keawe: Where is that covered in the conditions?

Mr. Dahilig: It is Condition No. 2; the proposed color scheme and detailed landscaping plan, and we added the words “and pool plan” shall be submitted to the Planning Department for its review and acceptance prior to building permit application.

Chair Keawe: So what you are saying is it is not this one?

Mr. Dahilig: Yes, I just want to be clear to the Commissioners that we would ask that this be considered just illustrative and not representative of the final approvals that are going to be submitted consequentially.

Chair Keawe: Okay. Everybody understand? Are we ready to make a decision? Do I have a motion?

Ms. Nogami Streufert: I move to accept the Special Management Area Use Permit for the construction of a second residence – SMA(U)-2018-2 – on Weke Road.

Mr. Dahilig: With the amended conditions.

Ms. Nogami Streufert: With the amended conditions.

Mr. Mahoney: Second.

Chair Keawe: It has been moved and seconded. Any discussion on this particular motion? If not, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. Thank you.

Mr. Jung: Thank you, Commissioners.

Mr. Kagle: Thank you.

Mr. Dahilig: Thank you, Mr. Chair.

Class IV Zoning Permit Z-IV-2017-15 and Use Permit U-2017-13 to allow construction of a swimming pool and pavilion on a parcel situated within the Seacliff Plantation Subdivision in Kīlauea, located along the mauka side of Makanaano Place, further identified as 2183F Makanaano Place, Tax Map Key: 5-2-004:091, and affecting a portion of a larger parcel containing 5.204 acres = Robert Leonard. [Director’s Report received 7/11/17, hearing POSTPONED due to applicant’s notification of abutting owners 7/25/17.]

Mr. Dahilig: We are on Item F.2.d. This is Class IV Zoning Permit Z-IV-2017-15 and Use Permit U-2017-13 to allow construction of a swimming pool and pavilion on a parcel located within Seacliff Plantation. This is, again, at TMK: 5-2-004:091. Alex will be providing the report on behalf of the Department.

Chair Keawe: Go ahead, Mr. Wong.

Staff Planner Alex Wong: Mahalo, Mr. Chair. Aloha mai kākou.

Mr. Wong read the Summary, Project Data, Project Description and Use, and Additional Findings sections of the Director's Report, as well as Supplemental No. 1 to the Director's Report for the record (on file with the Planning Department).

Mr. Wong: One of the things the applicant did address with these updated plans is the setback distance between structures; between the dwelling unit and the proposed pavilion. So he did change those to meet the setback requirement.

Chair Keawe: And those changes, Alex, are in the new plan that you gave us this morning?

Mr. Wong: Yes, correct. They are in the Supplement, in the new plan. It is to scale, so that is why I provided the actual drawings that were submitted. Okay, that is all at this time; that concludes my report. Mahalo.

Chair Keawe: We probably need to take a short break while we look for the applicant.

Mr. Dahilig: Actually, Mr. Chair, we have located the applicant. The applicant is in Kīlauea and apparently was not apprised as to what was, I guess...he interpreted the closing of the agency hearing as the approval of the permit. Dale is on the phone right now with him. It looks likely that we will not be able to proceed with the application because he is not here, so the Department would, I guess, request deferral of the item for two (2) weeks to the next Commission meeting on the 26<sup>th</sup> for his presentation and an action. Again, this is on Item F.2.d.

Chair Keawe: Any questions of Alex? Yes, Commissioner Streufert.

Ms. Nogami Streufert: The application for the grading and grubbing – one of the results of this is going to be drainage from the project will result in a continuous and natural flow into a gully. Where does the gully end up?

Mr. Wong: Okay, so from my experience being there on site, the house is actually situated on a low-elevation bluff but it is within a valley, and I think the gully that is referred to is the valley. It does flow makai, but there is a significant distance between the property and the actual ocean, the shoreline.

Ms. Nogami Streufert: But it says it will result in a continuous and natural flow, and the question is how much of a flow and is that going to go into the water in that area.

Mr. Wong: By “water”, do you mean like a body of water or stream?

Ms. Nogami Streufert: I'm not sure. It says, “Drainage from the project will result in a continuous and natural flow.”

Mr. Wong: Okay. I will have to clarify that comment because when I walked the site, there was no body of water on the property.

Ms. Nogami Streufert: Okay.

Chair Keawe: Alex, just a question, quick one, so this property does not have an oceanfront to it?

Mr. Wong: That is correct. It is landlocked.

Chair Keawe: It is landlocked. Okay, any further— Yes, Commissioner Streufert.

Ms. Nogami Streufert: This is in a residential area, but it is zoned Agriculture.

Mr. Wong: At the SLUD level; at the State zoning level.

Ms. Nogami Streufert: Right.

Mr. Wong: Yes.

Ms. Nogami Streufert: And as Agriculture, there are certain requirements for what that means in order to have it continue to be Agriculture and agricultural taxes or whatever. That is not our business, but is there anything in there that would indicate that this would meet all those requirements?

Mr. Wong: In terms of meeting the state requirement for Agricultural zoning, the protocol for the Planning Department is when the applicant does come in for the permit, they are required to produce a farm plan. Mr. Leonard has provided that...he intends to provide that document which outlines all of his agriculture producing trees and vegetation on his property and what he does with it, as well as any monetary value or revenue that he benefits from his production. He has made it clear to me verbally that he does not sell his produce, but that he does produce fruits and vegetables and he does provide it to the community. If you would like to see that, I could get that for you.

Ms. Nogami Streufert: Because I think that was one of the objections; that there was no farm plan that was attached to the application.

Mr. Wong: Typically, the Planning Department accepts that when they come in for the permit; over the counter.

Chair Keawe: So the produce from his plan, your understanding is...is that donated to the community?

Mr. Wong: Yes, he does not sell it.

Mr. Dahilig: I just want to be clear, though. In terms of farm plans, we have discretionary permits. We do, as part of the body of evidence, request that a farm plan be submitted as part of discretionary permits. The over-the-counter permits are when we are dealing with Class I or Class II situations that each of the technicians has the direction to request a farm plan at that

time, but there are no discretionary approvals that are consequential from that. So in this particular case, we believe a farm plan is a relevant thing to be asked for as part of the body of evidence for the Commission and we can follow-up for the Commissioners on requesting a farm plan to be submitted.

Chair Keawe: Any further questions of Mr. Wong? If not, obviously we cannot continue without the applicant, so I would entertain a motion to defer this item to September 26<sup>th</sup>.

Mr. Mahoney: Chair, move to defer Item F.d. [sic], Class IV Zoning Permit Z-IV-2017-15 and Use Permit U-2017-13 to September 26<sup>th</sup>.

Chair Keawe: Do I have a second?

Mr. Lord: Second.

Chair Keawe: It has been moved and seconded. Any discussion? If not, all those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Mr. Chair.

## **ANNOUNCEMENTS**

### Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu‘e Civic Center, Mo‘ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i 96766 on Tuesday, September 26, 2017.

Mr. Dahilig: I have distributed the on deck sheets for the Commissioners to review for, I guess, the items that are coming up. I also believe that the next meeting we should be...we will be considering a couple rule amendments that are being proposed, as well as the AES Solar application. Again, just as we have done in the past, we probably will be separating out the AES matter as a separate agenda item because that, per requirements of the State Land Use Commission, will need to be fully transcribed by a court reporter. So rather than have the court reporter for the full meeting, we are going to probably separate that meeting out as a separate item. Other than that, Mr. Chair, the next meeting of this commission is scheduled for Tuesday, September 26, 2017.

## **ADJOURNMENT**

Chair Keawe: Is there any further business to come before the Commission at this time? If not, I will entertain a motion to adjourn.

Mr. Ho: Move to adjourn.

Mr. Mahoney: Second.

Ms. Higuchi Sayegusa: I'm sorry. We are adjourning the Regular Commission Meeting but we still have the Contested Case agenda.

Mr. Dahilig: We would interpret it as adjourning the nine o'clock and one second agenda.

Ms. Higuchi Sayegusa: Thank you.

Chair Keawe: Okay. Make sure we get that in the record.

Mr. Mahoney: Do you want to rephrase your--

Mr. Ho: Move to adjourn meeting 1; 9:00:01.


Chair Keawe: Do I have a second?

Mr. Mahoney: Second.

Chair Keawe: It has been moved and seconded. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 5:0. Thank you.

Chair Keawe adjourned the meeting at 10:45 a.m.

Respectfully submitted by:

  
\_\_\_\_\_  
Darcie Agaran,  
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval)

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.

